



POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Order No. 1677; Docket No. RM2013-1]

Revisions to Rules of Practice

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice addresses proposed revisions to the Commission's rules of practice. The revisions (as clarified by an errata issued March 19, 2013) are intended to update existing rules due to recent statutory and regulatory changes; make technical editorial changes; and foster clarity and simplicity to reduce the potential for confusion. The notice also takes related administrative steps, including an invitation for comments on the proposed revisions.

Comments will assist the Commission in developing a final rule.

DATES: *Comment date:* Comments due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at

<https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the For Further Information Contact section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Case related information: Stephen L. Sharman, General Counsel, 202-789-6820; Electronic filing assistance: DocketAdmins@prc.gov.

SUPPLEMENTARY INFORMATION:

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- I. Background

The Postal Regulatory Commission (Commission) establishes a rulemaking docket pursuant to its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198 (2006), to consider amendments to the Commission's rules of practice and procedure, 39 CFR part 3001. These amendments propose minor changes that remove obsolete references, adopt new terminology, and make technical edits. As explained below, the passage of the PAEA required significant changes to the

Commission's rules to ensure that the rules encompassed the major changes promulgated by the PAEA.¹ The changes proposed by this order further revise the Commission's rules of practice by removing obsolete references brought on by prior rule changes.²

The PAEA transformed the Postal Rate Commission into the Postal Regulatory Commission; repealed several key sections of title 39 of the United States Code; and added a number of new statutory provisions to title 39. The result was a major change in the Commission's regulatory responsibilities and authorities. In response to the changes made by the PAEA, the Commission, on October 29, 2007, established a new system for regulating rates that was markedly different from the prior regulatory regime. See Order No. 43.

Due to the changes made by the PAEA and subsequent rulemakings, further amendments are required to remove obsolete references, include new terminology, and remove potential confusion from the Commission's rules of practice.

II. Proposed Changes to the Commission's Rules of Practice

The changes proposed in this order fall under three broad categories: (1) removal of statutory or regulatory references that have been repealed, amended, or removed since the adoption of the PAEA; (2) adoption of changes in

¹ See, e.g., Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2009 (Order No. 43).

² See *id.*, Docket No. RM2009-4, Order Eliminating Obsolete Rules of Practice, May 11, 2009 (Order No. 214).

terminology consistent with the PAEA and current Commission practice; and (3) minor clarifications and corrections. The following is a section-by-section analysis of the proposed amendments. Each paragraph containing a proposed change is reproduced below the Secretary's signature on this notice.

Rule 3001.5(a) is amended by defining "Act" to encompass title 39 in its entirety.

Rule 3001.5(h) is amended by clarifying that "participant" means any party to the proceeding, including formal intervenors, and by replacing "officer of the Commission who is designated to represent the interests of the general public" with "Public Representative."

Rule 3001.5(j) is amended by deleting obsolete references to 39 U.S.C. 3624 and 3662 and by adding "or any other proceeding noticed by the Commission under §§ 3001.17 and 3001.18(a) of this section" to the definition.

Rule 3001.5(m) is amended by replacing a reference to 39 U.S.C. 404(b) with a reference to 39 U.S.C. 404(d)(5).

Rule 3001.5(o) is amended by replacing "a proceeding conducted pursuant to subpart H of this part" with "a proceeding conducted pursuant to part 3025 of this chapter".

Rule 3001.5(p) is amended by deleting an obsolete definition of Domestic Mail Classification Schedule and reserving the paragraph for future use.

Rule 3001.5(q) is amended by replacing “Office of the Consumer Advocate” with “Public Representative”; “OCA” with “PR”; and “means the” with “means an.”

Rule 3001.7(a)(1)(iii) is amended by replacing “Office of Rates, Analysis and Planning” with “Office of Accountability and Compliance.”

Rule 3001.7(a)(2)(ii) is amended by replacing “Subpart C” with “Subpart B.”

Rule 3001.7(b) is amended to encompass proceedings under section 3661 of the Act; any proceeding noticed and set for hearing by the Commission pursuant to §§ 3001.17 and 3001.18(a); or any proceeding conducted pursuant to part 3025.

Rule 3001.9(a) is amended by replacing “Office of the Secretary” with “Office of Secretary and Administration” and by revising the Postal Regulatory Commission’s address to read “901 New York Avenue NW., Suite 200, Washington, DC 20268-0001.”

Rule 3001.9(c)(2) is amended by adding “federal” before the word “holiday.”

Rule 3001.9(e) is amended to replace “§ 11” with “§ 3001.11(e).”

Rule 3001.10(c) is amended by deleting the “or” that follows “Word,.”

Rule 3001.15 is amended by replacing “legal holiday for the Commission” with “federal holiday,”; “or holiday” with “nor a federal holiday,”; “less” with “fewer,”

and “legal holidays of the Commission” with “federal holidays.” It is also amended by deleting the sentence that reads “A part-day holiday shall be considered as other days and not as a holiday.”

Rule 3001.18(b) is amended by replacing “and the Commission shall then issue a recommended decision, advisory opinion, or public report, as appropriate, in accordance with the provisions of §§ 3001.34 to 3001.39” with “The Commission shall then issue an advisory opinion or final decision, as appropriate.” and by inserting a period at the end of the previous sentence.

Rule 3001.18(c) is amended by replacing “and a recommended decision, advisory opinion, or public report, as appropriate, shall then be issued pursuant to the provisions of §§ 3001.34 to 3001.39” with “The Commission shall then issue an advisory opinion or final decision, as appropriate.” and by inserting a period at the end of the previous sentence.

Rule 3001.19 is amended by deleting the word “involved” so that the applicable sentence now reads “Such notice shall be published in the Federal Register and served on all participants in the proceeding.”

Rule 3001.20a(c) is amended by replacing “Limited participants may file briefs” with “Limited participators may file briefs” and by deleting the reference to 39 U.S.C. 3622(b)(4).

Rule 3001.20b is amended by replacing “§§ 3001.19a and 3001.20” with “§§ 3001.20 and 3001.20a” and “§ 3001.17” with “§ 3001.17(a).”

Rule 3001.21(a) is amended by replacing “initial decision” with “intermediate decision.”

Rule 3001.23(a)(7) is amended by replacing “initial or recommended decision” with “intermediate decision.”

Rule 3001.23(a)(9) is amended by replacing “initial or recommended decision” with “intermediate decision.”

Rule 3001.24(a) is amended by deleting “recommended decision or” and obsolete references to sections 3622 and 3623 of the Act.

Rule 3001.24(d)(6) is amended by deleting obsolete references to sections 3622 and 3623 of the Act.

Rule 3001.25(a) is amended by deleting obsolete references to sections 3622, 3623, and 3662 of the Act.

Rule 3001.27(b) is amended by replacing “through .12” with “through 3001.12”.

Rule 3001.30(d) is amended by deleting obsolete references to sections 3622 and 3623 of the Act and by adding “and set for hearing pursuant to § 3001.18(a)” to the end of the first sentence.

Rule 3001.30(e)(2) is amended by replacing the reference to testimony “OCA-T1-17” with “PR-T1-17”.

Rule 3001.30(h) is amended by replacing references to “his” with “his/her”.

Rule 3001.31(k)(3)(i)(i) is amended by replacing “Administrative Office” with “Office of Secretary and Administration”.

Rule 3001.31a(c) is amended by deleting “and shall be subject to the provisions of § 3001.42 of this chapter”.

Rule 3001.32(f) is amended by replacing “allowed or requested” with “certified pursuant to paragraph (b)(1) of this section”; by replacing both references to “initial decision” with “intermediate decision”; and by replacing “at the conclusion of the proceeding” with “in the participants’ briefs in accordance with § 3001.34”.

Rule 3001.34(a) is amended by replacing “issuance of recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act” with “issuance of the decision or advisory opinion”.

Rule 3001.34(b)(3) is amended by replacing “the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued” with “and the advisory opinion or decision to be issued”.

Rule 3001.36 is amended by deleting references to “other designated officers” (including in the rule title) and by replacing references to “initial or recommended decisions” with “intermediate decisions”. It is also amended by replacing “shall determine the time and place for oral argument, the issue or

issues on which oral argument” with “shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument”.

Rule 3001.39(c) is amended by deleting “(initial, recommended or tentative)” and obsolete references to section 3622 and 3623 of the Act, and replacing “recommended decision, advisory opinion or public report” with “intermediate decision”.

Rule 3001.40 is amended by deleting the authority citation that follows the rule.

Rule 3001.41 is amended by deleting the authority citation that follows the rule.

Rule 3001.43(a) is amended by deleting “Access to documents being considered at Commission meetings shall be obtained in the manner set forth in § 3001.42”.

Rule 3001.43(c)(10) is amended by deleting “as provided by section 3624(a) of title 39” and by replacing “a civil action or proceeding” with “a civil action or appellate proceeding”.

Rule 3001.43(e)(4)(i) is amended by replacing “office of the Secretary of the Commission” with “reception area of the Postal Regulatory Commission located”.

Rule 3001.43(g)(1)(iii) is amended by replacing both references to the “office of the Secretary” with the “Office of Secretary and Administration”.

Rule 3001.43(g)(2)(iii) is amended by replacing both references to the “office of the Secretary” with the “Office of Secretary and Administration”.

Rule 3001.72 is amended by replacing “a recommended decision” with “an advisory opinion”.

Rule 3001.75 is amended to read “The provisions of § 3001.12 govern the Postal Service’s service requirements for proceedings conducted under this subpart. Service must be made on all participants as defined in § 3001.5(h)”.

III. Invitation to Comment

Interested persons are invited to comment on the proposed changes to part 3001. Comments are due within 30 days of the date of publication of this notice in the *Federal Register*.

Pursuant to 39 U.S.C. 505, James Waclawski is designated as the Public Representative in this proceeding to represent the interests of the general public.

IV. Ordering Paragraphs

It is ordered:

1. Docket No. RM2013-1 is established for the purpose of receiving comments on the proposed changes to 39 CFR part 3001, as discussed in this order.

2. Interested parties may submit comments no later than 30 days from the date of publication of this notice in the *Federal Register*.

3. Pursuant to 39 U.S.C. 505, James Wacławski is appointed to serve as Public Representative in this proceeding.

4. The Secretary shall arrange for publication of this order in the *Federal Register*.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Freedom of information, Postal Service, Sunshine Act.

By the Commission.

Shoshana M. Grove,

Secretary.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

Subpart A—Rules of General Applicability

2. Revise 3001.5 to read as follows:

§ 3001.5 Definitions.

(a) *Act* means title 39, United States Code, as amended.

(b) *Postal Service* means the U.S. Postal Service established by the Act.

(c) *Commission* or *Commissioner* means, respectively, the Postal Regulatory Commission established by the Act or a member thereof.

(d) *Secretary* means the Secretary or the Acting Secretary of the Commission.

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

(f) *Person* means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.

(g) *Party* means the Postal Service, a complainant, an appellant, or a person who has intervened in a proceeding before the Commission.

(h) *Participant* means any party to the proceeding, including formal intervenors as described in § 3001.20, and the Public Representative and, for the purposes of § 3001.11(e), § 3001.12, § 3001.21, § 3001.23, § 3001.24, § 3001.29, § 3001.30, §3001.31, and § 3001.32 only, it also means persons who are limited participators.

(i) *Complainant* means a person or interested party who as permitted by section 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(j) *Hearing* means a hearing under sections 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by section 3661 of the Act or in any other proceeding noticed by the Commission under § 3001.17 and § 3001.18(a).

(k) *Record* means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the record for decision.

(l) *Effective date* of an order or notice issued by the Commission or an officer of the Commission means the date of issuance unless otherwise specifically provided.

(m) *Petitioner* means a person who is permitted by 39 U.S.C. 404(d)(5) to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

(n) *Commission meeting* means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by § 3001.43(d) or § 3001.43(e).

(o) *Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants and limited participators is not given, but it shall not include requests for status reports on any matter or proceeding covered by subchapter II of

chapter 5 of title 5, U.S.C. or a proceeding conducted pursuant to part 3025 of this chapter.

(p) *Reserved.*

(q) *Public Representative* or *PR* means an officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

(r) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or terms of service in accordance with the terms or conditions of the contract. A rate associated with a negotiated service agreement is not rate of general applicability.

(s) *Postal service* refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.

(t) *Product* means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.

3. In § 3001.7, revise paragraphs (a) and (b) to read as follows

§ 3001.7 *Ex parte communications.*

(a) *Definitions*—(1) *Decision-making personnel.* Subject to the exception stated in paragraph (a)(2)(ii) of this section, the following categories of persons are designated “decision-making Commission personnel”:

- (i) The Commissioners and their personal office staffs;
- (ii) The General Counsel and his/her staff;
- (iii) The Director of the Office of Accountability and Compliance and his/her staff.
- (iv) Any other employee who may reasonably be expected to be involved in the decisional process.

(2) *Non-decision-making Commission personnel.* The following categories of person are designated “non-decision-making personnel”:

- (i) All Commission personnel other than decision-making Commission personnel;
- (ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or part 3000, subpart B of this chapter.

(b) *Prohibition.* In any agency proceeding conducted under section 3661 of the Act; noticed and set for hearing by the Commission pursuant to § 3001.17 and § 3001.18(a); or any proceeding conducted pursuant to part 3025 of this chapter to the extent required for the disposition of ex parte matters as authorized by law:

* * * * *

4. Revise § 3001.9 to read as follows:

§ 3001.9 *Filing of documents.*

(a) *Filing with the Commission.* The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer, shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission's Web site (<http://www.prc.gov>), unless a waiver is obtained. If a waiver is obtained, a hard copy document may be filed either by mailing or by hand delivery to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001 during regular business hours on a date no later than that specified for such filing. The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to part 3025 of this chapter.

(b) *Account holder.* In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a principal account holder or an agent account holder (Filing Online account holder). The authority of the principal account holder to represent the participant on whose behalf the document is filed must be valid and current, in conformance with § 3001.6. The authority of an agent account holder to submit documents for a principal account holder must be valid and current. A principal account holder must promptly inform the Secretary of any change in his/her authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on his/her behalf.

(c) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule or order authorized by the Commission shall be accepted for filing. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online account holder.

(1) Subject to § 3001.9(d):

(i) A document submitted through Filing Online is filed on the date indicated on the receipt issued by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(ii) A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(2) Any document received after the close of regular business hours or on a Saturday, Sunday, or federal holiday, shall be deemed to be filed on the next regular business day.

(d) *Rejected filings.* Any filing that does not comply with any applicable rule or order authorized by the Commission may be rejected. Any filing that is rejected is deemed not to have been filed with the Commission. If a filing is rejected, the Secretary or the Secretary's designee will notify the person submitting the filing, indicating the reason(s) for rejection. Acceptance for filing

shall not waive any failure to comply with this part, and such failure may be cause for subsequently striking all or any part of any document.

(e) *Account holder exemptions.* Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of paragraphs (b) and (c) of this section, and the subscription requirements of § 3001.11(e). Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.

5. In § 3001.10, revise paragraph (c) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(c) *Computer media.* A participant that has obtained a waiver of the online filing requirement of § 3001.9(a) may submit a document on standard PC media, simultaneously with the filing of one printed original and two hard copies, provided that the stored document is a file generated in either Acrobat (pdf), Word, WordPerfect, or Rich Text Format (rtf).

* * * * *

6. Revise § 3001.15 to read as follows:

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a federal holiday. In computing a period of time which is 5 days or fewer, all Saturdays, Sundays, and federal holidays are to be excluded.

7. Revise § 3001.18 to read as follows:

§ 3001.18 Nature of the proceedings.

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.9

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference

pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to § 3001.34 and §3001.37. The Commission shall then issue an advisory opinion or final decision, as appropriate.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument. The Commission shall then issue an advisory opinion or final decision, as appropriate. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

8. Revise § 3001.19 to read as follows:

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a), the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original

notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the *Federal Register* and served on all participants in the proceeding. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

9. Revise § 3001.20a to read as follows:

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions:

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the intervenor's interest in the proceeding, and shall conform to the requirements of §§ 3001.9 through 3001.12.

(b) *Oppositions.* Oppositions to notices to intervene as a limited participator may be filed by any participant in the proceeding no later than 10 days after the notice of intervention as a limited participator is filed.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-

examination on the same terms applicable to that of formal participants. Limited participators may file briefs or proposed findings pursuant to § 3001.34 and § 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under §§ 3001.25 through 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

10. In § 3001.20b, revise the introductory paragraph and paragraph (a) to read as follows:

§ 3001.20b Informal expression of views by persons not parties or limited participators (commenters).

Notwithstanding the provisions of § 3001.20 and § 3001.20a, any person may file with the Commission, in any case that is noticed for a hearing pursuant to § 3001.17(a), an informal statement of views in writing, in accordance with the following provisions:

(a) *Form of statement.* A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered on the form provided this purpose under the “Contact Us” link on the Commission’s Web site, <http://www.prc.gov>.

* * * * *

11. In § 3001.21, revise paragraph (a) to read as follows:

§ 3001.21 *Motions.*

(a) *Scope and contents.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of §§ 3001.9 to 3001.12. All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an intermediate decision pursuant to § 3001.39 or certification of the record to the Commission pursuant to § 3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

* * * * *

12. In § 3001.23, revise paragraphs (a)(7), (a)(8), (a)(9), and (a)(10) to read as follows:

§ 3001.23 Presiding officers.

(a) * * *

(7) To dispose of procedural requests or similar matters but not, before their intermediate decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an intermediate decision in accordance with § 3001.38 and § 3001.39; and

(10) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

* * * * *

13. In § 3001.24, revise paragraphs (a) and (d)(6) to read as follows:

§ 3001.24 Prehearing conferences.

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the

proceeding, including those in paragraph (d) of this section. It is the intent of the Commission to issue its advisory opinion on requests under section 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

* * * * *

(d) * * *

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding;

* * * * *

14. In § 3001.25, revise paragraph (a) to read as follows:

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3661 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose

of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

* * * * *

15. In § 3001.27, revise paragraph (b) to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

* * * * *

(b) Answers. The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 3001.12 within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section.

* * * * *

16. In § 3001.30, revise paragraphs (d), (e)(2), and (h) to read as follows:

§ 3001.30 Hearings.

* * * * *

(d) *Order of procedure*. In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under section 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act and set for hearing pursuant to

§ 3001.18(a). With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) * * *

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served in accordance with §§ 3001.9 through 3001.12 no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, “PR-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).” When a participant designates written cross-examination, two hard copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-

examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

* * * * *

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of his/her intermediate decision. This section shall not preclude a presiding officer, within his/her discretion, from referring any motion made in hearing to the Commission for ultimate determination.

* * * * *

17. In § 3001.31, revise paragraph (k)(3)(i)(i) to read as follows:

§ 3001.31 *Evidence.*

* * * * *

(k) * * *

(3) * * *

(i) * * *

(i) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Office of Secretary and Administration of the Postal Regulatory Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hardcopy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

18. In § 3001.31a, revise paragraph (c) to read as follows:

§ 3001.31a In camera orders.

* * * * *

(c) *Release of in camera information.* *In camera* documents and testimony shall constitute a part of the confidential records of the Commission. However, the Commission, on its own motion or pursuant to a request, may

make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

* * * * *

19. In § 3001.32, revise paragraph (f) to read as follows:

§ 3001.32 Appeals from rulings of the presiding officer.

* * * * *

(f) *Review at conclusion of proceeding.* If an interlocutory appeal is not certified pursuant to paragraph (b)(1) of this section, objection to the ruling may be raised on review of the presiding officer's intermediate decision, or, if the intermediate decision is omitted, in the participants' briefs in accordance with § 3001.34.

* * * * *

20. In § 3001.34, revise paragraphs (a) and (b)(3) to read as follows:

§ 3001.34 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of the decision or advisory opinion. In addition, subject to such consideration, due regard shall be given to

the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b) * * *

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service and the advisory opinion or decision to be issued;

* * * * *

21. Revise § 3001.36 to read as follows:

§ 3001.36 Oral argument before the presiding officer.

In any case in which the presiding officer is to issue an intermediate decision, such officer may permit the presentation of oral argument when, in

his/her opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants hearing such argument. The presiding officer shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

22. In § 3001.39, revise paragraph (c) to read as follows:

§ 3001.39 Intermediate decisions.

* * * * *

(c) *Contents.* All intermediate decisions shall include findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and the appropriate intermediate decision pursuant to the Act. An intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

* * * * *

23. Revise § 3001.40 by removing the authority citation.

24. Revise § 3001.41 by removing the authority citation.

25. In § 3001.43, revise paragraphs (a), (c)(10), (e)(4)(i), (g)(1)(iii), and (g)(2)(iii) to read as follows:

§ 3001.43 Public attendance at Commission meetings.

(a) *Open Commission meetings.* (1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (c) of this section, every portion of every meeting of the Commission shall be open to public observation.

* * * * *

(c) * * *

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or appellate proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in section 554 of title 5, U.S.C. or otherwise involving a determination on the record after opportunity for a hearing.

* * * * *

(e) * * *

(4) * * *

(i) Publicly posting a copy of the document in the reception area of the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001;

* * * * *

(g) * * *

(1) * * *

(iii) Ten copies of such requests must be received by the Office of Secretary and Administration no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the Office of Secretary and Administration 10 working days after the meeting.

(2) * * *

(iii) Ten copies of such requests should be filed with the Office of Secretary and Administration as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the Office of Secretary and Administration no later than the time scheduled for the meeting to which such a request pertains.

* * *

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

26. Revise § 3001.72 to read as follows:

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

§ 3001.72 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and § 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for an advisory opinion in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the *Federal Register* for publication in the *Federal Register*.

27. Revise § 3001.75 to read as follows:

§ 3001.75 Service by the Postal Service.

The provisions of § 3001.12 govern the Postal Service's service requirements for proceedings conducted under this subpart. Service must be made on all participants as defined in § 3001.5(h).

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